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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 DARRELL TATE,

9 Plaintiff,

10 v.

11 PIERCE COUNTY CORRECTIONS  
12 HEALTH CLINIC; PIERCE COUNTY  
13 JAIL; and PIERCE COUNTY, a  
governmental entity of the State of  
Washington,

14 Defendants.

CASE NO. C11-5418BHS

ORDER DISMISSING  
PLAINTIFF'S FEDERAL  
CLAIMS AND REMANDING  
REMAINING STATE LAW  
CLAIMS

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16 This matter comes before the Court on Defendants' motion to dismiss all of  
17 Plaintiff's ("Tate") claims. Dkt. 7 The Court has considered the pleadings filed in support  
18 of and in opposition to the motion and the remainder of the file and hereby grants  
19 Defendants' motion to dismiss as to Tate's federal claims and remands his remaining state  
20 law claims to state court.

21 **I. PROCEDURAL HISTORY & FACTUAL BACKGROUND**

22 Defendants removed this matter from state court based on federal question  
23 jurisdiction. Dkt. 1. Tate's complaint alleges several state law claims and two federal  
24 claims (Eighth Amendment, cruel and unusual punishment, and a claim for failure to  
25 train). Dkt. 1, Ex. A (Complaint).

26 On June 9, 2011, Defendants moved to dismiss each of Tate's claims pursuant to  
27 Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 12(b)(6) and 12(b) generally. Dkt. 7.  
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1 On June 29, 2011, Tate responded in opposition to Defendants' motion to dismiss. Dkt.  
2 11. On July 8, 2011, Defendants replied.

3 This matter arises from Tate's alleged treatment or lack thereof for his medical  
4 impairments while he was incarcerated in the Pierce County corrections system between  
5 January 3 and February 26, 2008. In short, at all relevant times, Tate alleges that he did  
6 not receive sufficient medical treatment for his medical conditions, which resulted in,  
7 among other things, his left great toe becoming infected. Tate submitted several kites to  
8 the jail regarding his medical needs. *See* Dkt. 11, Ex. 4 at 29-35 (copy of kites). Tate did  
9 not file any formal grievance, nor did he file any administrative appeal regarding the  
10 issues described in his kites.

## 11 II. DISCUSSION

### 12 A. Motions to Dismiss

#### 13 1. Rule 12(b)(6) Standard

14 Fed. R. Civ. P. 12(b)(6) motions to dismiss may be based on either the lack of a  
15 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal  
16 theory. *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990).  
17 Material allegations in the complaint are taken as admitted and the complaint is construed  
18 in a plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295 (9th Cir. 1983). "While a  
19 complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual  
20 allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief  
21 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
22 cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65  
23 (2007) (internal citations omitted). "Factual allegations must be enough to raise a right to  
24 relief above the speculative level, on the assumption that all the allegations in the  
25 complaint are true (even if doubtful in fact)." *Id.* at 1965. Plaintiffs must allege "enough  
26 facts to state a claim to relief that is plausible on its face." *Id.* at 1974.

## 2. Exhaustion, Unenumerated 12(b) Motions

Pursuant to the Prison Litigation Reform Act (“PLRA”) of 1995, “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Prisoners are required to exhaust the available administrative remedies prior to filing suit. *Jones v. Bock*, 549 U.S. 199, 211 (2007); *McKinney v. Carey*, 311 F.3d 1198 (9th Cir. 2002) (per curiam). Exhaustion is required regardless of the relief sought by the prisoner and regardless of the relief offered by the process, *Booth v. Churner*, 532 U.S. 731, 741 (2001), and the exhaustion requirement applies to all prisoner suits relating to prison life, *Porter v. Nussle*, 435 U.S. 516, 532 (2002).

Section 1997e(a) does not impose a pleading requirement, but rather, is an affirmative defense under which defendants have the burden of raising and proving the absence of exhaustion. *Jones*, 549 U.S. at 216; *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003). The failure to exhaust nonjudicial administrative remedies that are not jurisdictional is subject to an unenumerated Rule 12(b) motion, rather than a summary judgment motion. *Wyatt*, 315 F.3d at 1119 (treating such as a matter in abatement) (citing *Ritza v. Int’l Longshoremen’s & Warehousemen’s Union*, 837 F.2d 365, 368 (9th Cir. 1998) (per curiam)). In deciding a motion to dismiss for failure to exhaust administrative remedies, the Court may look beyond the pleadings and decide disputed issues of fact. *Id.* at 1119–20. If the Court concludes that the prisoner has failed to exhaust administrative remedies, the proper remedy is dismissal without prejudice. *Id.*

Therefore, Defendants’ unenumerated 12(b) motion is proper with respect to their motion to dismiss Tate’s federal claims for failure to exhaust administrative remedies pursuant to the PLRA.

1 **B. Defendants’ Motion to Dismiss Tate’s Federal Claims**

2 The PLRA’s purpose is two-fold. First, it seeks to eliminate unwarranted federal  
3 court interference with prison administration by affording corrections officials time to  
4 internally address complaints. *Porter v. Nussle*, 543 U.S. 516, 525 (2002). And second, it  
5 reduces the quantity and improves the quality of prisoner suits. *Id.* at 524. Permitting a  
6 plaintiff to proceed with unexhausted § 1983 claims undermines both these purposes  
7 because in doing so the Court wastes valuable judicial resources by prematurely meddling  
8 in prison administration, an area “peculiarly within the province of the legislative and  
9 executive branches of government.” *Turner v. Safley*, 482 U.S. 78, 84-85 (1987). In such  
10 cases, therefore, dismissal is proper.

11 Here, administrative remedies are available because Pierce County has an  
12 established grievance system for addressing grievances like Tate’s. Declaration of Pam  
13 Lacipierre, Ex. A at 1 (copy of Pierce County process for formal grievances and  
14 appealing such complaints). Thus, the threshold issue before the Court regarding Tate’s  
15 federal claims is whether he properly utilized the established grievance system. He did  
16 not. While Tate did submit multiple Kites, such does not conform with the proper, formal  
17 grievance protocol of Pierce County for those incarcerated as Tate was. *See id.* Therefore,  
18 he did not exhaust his administrative remedies, which was required before bringing this  
19 suit.  
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21 Because of Tate’s failure to exhaust, the Court dismisses his federal claims under  
22 the unenumerated Rule 12(b) standard.

23 **C. Remand**

24 A district court “may decline to exercise supplemental jurisdiction over a [state  
25 law] claim . . . if . . . the district court has dismissed all claims over which it has original  
26 jurisdiction . . . .” 28 U.S.C. 1367. Having dismissed herein Tate’s federal claims, the  
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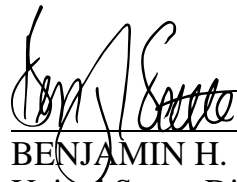
1 Court declines to exercise supplemental jurisdiction and remands Tate's remaining state  
2 law claims in this matter to state court.

3 **III. ORDER**

4 Therefore, it is hereby **ORDERED** that

- 5 (1) Defendants' motion to dismiss Tate's claims (Dkt. 7) is **GRANTED** as to  
6 Tate's federal claims but not his state law claims, dismissal is **without**  
7 **prejudice**; and  
8 (2) Tate's remaining state law claims are **REMANDED** to state court for the  
9 reasons discussed herein.

10 DATED this 10th day of August, 2011.

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13 BENJAMIN H. SETTLE  
14 United States District Judge  
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